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U.S. Citizenship
and Immigration
Services

D2

APR 23 2004

FILE: LIN 03 075 50931 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Mai Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the petitioner filed a motion to reopen or reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a printing and publishing company that seeks to employ the beneficiary as a graphic designer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief, a credentials evaluation for the beneficiary, and letters from the beneficiary's former employers.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) counsel's motion to reopen or reconsider; (6) the director's letter dismissing the motion; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a graphic designer. The petitioner indicated in a letter dated December 17, 2002 that it wished to hire the beneficiary because he possessed over 13 years of

experience in the field, which is equivalent to a bachelor's degree in graphic design. The petitioner requires a baccalaureate degree or its equivalent in graphic design for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because he has 13 years of experience in the graphic design field. Counsel also submits a copy of an evaluation from Morningside Evaluations and Consulting.

The director found that the evidence submitted with the petition was not sufficient to document the beneficiary's qualifications and requested additional evidence. In response, counsel resubmitted all of the previously submitted evidence, and provided no additional evidence. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Counsel's motion to reopen or reconsider indicated that a new attorney in his office prepared the response to the request for evidence without consulting him. The letter responding to the request for evidence is signed by counsel, and it is counsel's responsibility to read documents that accompany his signature. He cannot later claim no knowledge of the request for evidence or the response to that request when the response comes with his signature and from his office.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in graphic design. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSIS);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel submitted an evaluation from Globe Language Services, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor of arts degree in commercial art and illustration from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Counsel also provided a letter from an official with the Immigration and Naturalization Service (INS), dated February 23, 1995, which states that INS would "honor evaluations from all educational credential evaluations services, including Globe Language Services, Inc. Furthermore, as stated previously, Service adjudicators will give due weight to *educational credentials evaluations*." (Emphasis added). Counsel asserts that this letter somehow proves that Globe Language Services has been approved to make evaluations of an alien's work experience or training, but it clearly states that the letter relates to educational credentials evaluations only.

In addition, counsel provided a letter from the Director of Admissions, Pace University, stating that it accepts the evaluations of Globe Language Services. The letter from Pace does not reference any reliance on Globe Language Services to make evaluations of a prospective student's work experience or training, only "international credential [sic] or academic history." The letter also states that the university often relies on "recommendations presented by experts in the field of applied comparative education." Again, this does not state or imply that the university uses the evaluations service for evaluating work experience, only "credential [sic] or academic history." Counsel asserts that the letter from Pace University gives Globe Language Service the "authority to grant college-level credit." Nothing could be further from the truth. The evaluation itself clearly states that it is "advisory and is not binding on anyone who uses it." Counsel is making spurious assertions in an attempt to establish authority in contradiction to the regulations. The AAO notes that even if it were to take into account the credentials evaluation submitted on appeal, it faces the same problems as the previously submitted evaluation. The evaluator does not have authority to grant college-level credit for training and/or experience in the specialty.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the

theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As stated above, this adjudication is based on the record before the director. The materials submitted on appeal will not be considered as they all could have been submitted in response to the director's request for evidence. The letters submitted with the petition, and again in response to the director's request for evidence, were brief letters from the beneficiary's previous employers, simply stating that the beneficiary had worked in a particular position for a given time period. They are not a "recognition of expertise in the specialty occupation by...recognized authorities," and there is no description of the duties to establish that the positions involved the theoretical and practical application of graphic design. The AAO notes that the letters provide so little information as to have made it impossible for the credentials evaluator to make a responsible evaluation, even if he had been authorized to do so.

The documentation does not establish equivalence to a baccalaureate degree in graphic design. None of the training certificates indicates the length of training or any detail of the subjects that the courses covered. In addition, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in graphic design. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.